No. 4152

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

JOHN R. CORBETT, also known as J. R. CORBETT, and NORA E. BISHOP, alias ELLEN STONE,

Plaintiffs in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

BRIEF OF PLAINTIFFS IN ERROR.

Upon Writ of Error from the United States District Court, for the District of Idaho, Southern Division.

Filed ..... , 192....

By .....

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STATEMENT OF THE CASE.

Plaintiffs in error were indicted in the District Court of the United States for the District of Idaho, upon two indictments, Nos. 954 and 995.

Upon indictment No. 954, John R. Corbett was charged with the violation Act of June 25, 1910,

White Slave Traffic Act, containing two counts.

I.

The first count charged:

That on or about the 20th day of January, 1923, John R. Corbett did knowingly, wilfully, unlawfully and feloniously transport and cause to be transported and did aid and assist in the transportation of Nora E. Bishop, alias Ellen Stone, in interstate commerce from Spokane, State of Washington, to Boise, State of Idaho, with the intent and purpose on his part to induce, entice and compel her to engage in immoral practices, to-wit, the practice of illicit sexual intercourse with him.

II.

The second count of said indictment charged:

That John R. Corbett did persuade, induce and entice Nora E. Bishop, alias Ellen Stone, to go and be carried in interstate commerce from Spokane, Washington, to Boise, Idaho, to engage in immoral practices with him, to-wit: illicit sexual intercourse with him. (Trans. pp. 7-8-9).

Indictment No. 995 charged the defendants with a conspiracy to commit an offense against the United States by conspiring and agreeing together, that the defendant, Nora E. Bishop, alias Ellen Stone, should be transported in interstate commerce from Spokane, State of Washington, to Boise, State of Idaho, with the intent and purpose on the part of John R. Corbett to induce, entice and procure the

said Nora E. Bishop to give herself up to debauchery and other immoral practices. (Trans. pp. 11-12-13-14-15-16).

By agreement of counsel for both sides, the two cases were consolidated for trial, the result of the trial:

John R. Corbett was convicted on both counts of indictment No. 954 and both defendants were convicted on indictment No. 995. The facts as proved by the evidence on the trial of the consolidated cases were that the defendants, Corbett and Nora E. Bishop, became acquainted at and during the time Nora E. Bishop was being tried in the Federal Court at Boise, Idaho, upon the charge of embezzling postoffice funds. Upon her acquittal of said charge, defendant Corbett took her to the Capital Hotel at Boise, Idaho, secured her a room in close proximity to the room he there occupied, paid her room rent, and on divers occasions at his request, had her room changed to a room adjoining his with connecting door between. The connecting doors of the various rooms so occupied could be locked from each side. On or about November 1st, 1923, on Corbett's request their rooms were changed to Rooms No. 27 and 65 (Tr. p. 26), whicht were light housekeeping rooms, with a connecting door and could be locked from each side. A short time later their rooms were changed (Tr. pp 36, 37). This situation of defendant's continued from October, 1922, to December, 1922, (Tr. pp. 26, 27), during

all the times defendants were living at the hotel their conduct was proper. During this period Nora E. Bishop was in the employ of the Uneda Restaurant, W. 33, Boise, Idaho, taking her meals there. She had established her domicile at Boise and had consulted an attorney in regard to obtaining a divorce from her husband.

On the 18th day of December, 1922, the defendant, Nora E. Bishop, received the following telegram:

Spokane, Wash.,
December 18/22.

Ellen Stone,
Capital Hotel,
Boise, Idaho.

Tel and I are going to be operated on on the 21st of December. Come before it is too late.

(Signed) Daughter.

Upon receipt of this telegram, defendant, Nora Bishop, arranged to go to Spokane. She had her employer keep her place open in the restaurant until her return and had her room, No. 36 in the Capital Hotel, kept for her during her absence. (Tr. p. 33). Her things were left in her room, No. 36. Corbett did not accompany her on said trip but remained in Boise, occupying room 37 in said hotel.

Before leaving, she stated she intended returning to Boise, and while at Spokane she wrote her father, telling him she intended returning to Boise. Defendant, Corbett, loaned her money on which to go to Spokane (Tr. p. 28), and sent her while at

Spokane $15.00 (Tr. p. 28), and at her request, defendant purchased a ticket for defendant Bishop from Weiser, Idaho, to Boise, Idaho. (Tr. p. 30).

On defendant Bishop's arrival with her three-year-old child at Boise, defendant Corbett met her at the depot (Tr. p. 31), took her and child to her reserved room at the Capital Hotel. Corbett built a fire for her, made a cup of coffee in his room and had a light lunch. (Tr. p. 31). They talked until about 10 p. m. when Corbett returned to his room, No. 37. (Tr. p. 31). They were arrested about midnight. Each at the time of the arrest were in their respective rooms, with the connection door locked. (Tr. p. 30).

SPECIFICATIONS OF ERRORS.

I.

The Court erred in refusing to give the following instruction requested by the defendants:

> "The jury are instructed, if you find from the evidence that the defendants were domiciled and living at Boise, Idaho, and that Nora E. Bishop, alias Ellen Stone, was transported in interstate commerce to Spokane, State of Washington, and returned to Boise, Idaho, and at the time of leaving Boise, Idaho, she left her position of employment both defendants fully intended that she would return to her employment at Boise, Idaho, after having visited her children at Spokane, Washington, and if you further find from the evidence that the defendant, Corbett, at the time of her leaving

> Boise, Idaho, arranged with her to furnish her the money and did furnish her the money to pay her transportation in interstate commerce to Spokane, Washington, and return to Boise, Idaho, and if you should further find from the evidence that the defendants prior to and at the time of her going to Spokane and returning to Boise had illicit intercourse, you should acquit them."

For the reasons the evidence shows the defendwere domiciled in Boise at the beginning of the interstate transportation that Nora E. Bishop was there employed, was domiciled there for the purpose of securing a divorce from her husband, that the trip was a continuous trip from Boise, Idaho, to Spokane, Washington, and return; that the transportation in interstate commerce both to and from Spokane and Boise was for a proper and legitimate purpose, that the intent at all the times on the part of the defendants was for her to return to her employment and her domicile at Boise, Idaho.

II.

The Court erred in refusing to give the following instruction, as requested by the defendants:

> "The jury are instructed that if you are satisfied from the evidence that the defendants were domiciled and living at Boise, Idaho, and while so domiciled and living, Nora E. Bishop, alias Ellen Stone, was transported in interstate commerce to Spokane, Washington, from Boise, Idaho, and returned from Spokane, Washington, to Boise, Idaho, and at the time

of leaving Boise, Idaho, for Spokane, Washington, she left her position of employment, both of the defendants fully intending at the time she left Boise, Idaho, that she would return from Spokane, Washington, to her employment at Boise, Idaho, after having visited her children at Spokane, Washington, and if you find from the evidence that the defendant, J. R. Corbett, at the time of her leaving Boise, Idaho, for her said trip to Spokane, Washington, and return, arranged with her to furnish the money and did furnish her the money to pay her transportation in interstate commerce to Spokane, Washington and return to Boise, Idaho, and even if you should further find from the evidence that the defendants prior to and at the time of her going from Boise, Idaho, to Spokane, Washington, and returning to Boise, Idaho, had illicit intercourse, and if you further find from the evidence that he had in mind at the time of furnishing transportation that he would continue the prior illicit intercourse with her, you should acquit them."

For the reasons set out in Assignment No. 1.

III.

The verdict of the jury is contrary to the evidence, as follows:

(a) There is no proof that the transportation in interstate commerce was with the intent and purpose that Nora E. Bishop give herself up to debauchery and other immoral practices.

(b) There is no direct proof as to any illicit intercourse between the defendants at any time.

(c) There is no proof that Nora E. Bishop was transported from one state to another.

(d) There is no direct proof as to Nora E. Bishop being transported in interstate commerce with the intent and purpose that she give herself up to debauchery and other immoral practices.

(e) There is no proof that there was at any time illicit sexual intercourse between the defendants.

(f) There is not proof as to any illicit intercourse except circumstantial evidence of their association together in the Capitol Hotel prior to her transportation in interstate commerce from Spokane, Washington, to Boise, Idaho, or upon her return to Boise, Idaho.

(g) There is no proof that any offense was committed as prohibited or denunced by the White Slave Traffic Act, or any law of the United States.

(h) There is no proof that the transportation in interstate commerce was with any other intent or purpose than a ligitimate purpose.

(i) There is no evidence of a conspiracy showing any intent on the part of either of the defendants, as charged in indictment No. 995.

(j) There is no proof that the transportation in interstate commerce was with the intent and purpose on the part of John R. Corbett to induce, entire and compel Nora E. Bishop, alias Ellen Stone, to engage in immoral practices, as set out in the first count of the indictment, No. 954.

(k) There is no proof that the defendant, John R. Corbett, induced, enticed or persuaded Nora E.

Bishop, alias Ellen Stone, to be transported with the intent and purpose that she engage in immoral practices with him as alleged in count two of the indictment, No. 954.

(1) There is no proof that the defendant, John R. Corbett, aided, assisted or caused Nora E. Bishop, alias Ellen Stone, to be carried and transported from Spokane, Washington, to Boise, Idaho, as alleged in count two of the indictment, No. 954.

IV.

The Court erred in denying defendants' motion for a new trial, for the reasons set out in assignment "a to l" inclusive, of No. 3 and Assignments os. 1 and 2 herein.

V.

The verdict herein is contrary to the law, for the reasons set out in Assignment No. 3.

VI.

The verdict herein is contrary to the law for the reason that the indictment does not state a conspiracy, as there is no joint intent alleged therein.

The judgments herein are unlawful, for the reasons that they are based upon verdicts unlawful and unsupported by the evidence, in the particulars set out in Specification No. 3, herein stated.

ARGUMENT.

The Court erred in refusing to give instructions requested by defendants set out in Assignment of Error No. 1, as follows, to-wit:

> "The jury are instructed, if you find from the evidence that the defendants were domiciled and living at Boise, Idaho, and that Nora E. Bishop, alias Ellen Stone, was transported in interstate commerce to Spokane, State of Washington, and returned to Boise, Idaho, and at the time of leaving Boise, Idaho, she left her position of employment both defendants fully intended that she would return to her employment at Boise, Idaho, after having visited her children at Spokane, Washington, and if you further find from the evidence that the defendant, Corbett, at the time of her leaving Boise, Idaho, arranged with rer to furnish her the money and did furnish her the money to pay her transportation in interstate commerce to Spokane, Washington, and return to Boise, Idaho, and if you should further find from the evidence that the defendants prior to and at the time of her going to Spokane, and returning to Boise had illicit intercourse, you should acquit them."

For the reason that the evidence in this case shows that no law was violated by the defendants or either of them. The evidence proved that Nora Bishop had left her husband and had established her domicile at Boise, Idaho, from on or about the 3rd day of October, 1922 (Tr. p. 26), had consulted an attorney with a view of securing a divorce (Tr. p. 32), was residing at the Capital Hotel, employed in a restaurant, taking her meals there. (Tr. p. 33). During all this time she associated with the defendant, Corbett, and expected to marry him upon receiving her divorce. (Tr. p. 32). He aided her by paying her room rent and a part of the money was

returned by her to him. (Tr. p. 33). On the 18th day of December, 1922, she received the following telegram from her daughter: (Tr. p. 27).

Spokane, Wash., Dec. 18th, 1922.

Ellen Stone,
Capital Hotel,
Boise, Idaho.

Ted and I are going to be operated on on the twenty-first of December. Come before it is too late.

(Signed) Daughter.

Upon the receipt of this telegram, Nora Bishop, alias Ellen Stone, made arrangements to go to Spokane, (Tr. p. 27), and attend her children during their illness and as soon as possible would return to Boise, Idaho. She retained her room in the Capital Hotel, leaving a part of her things there and had the landlady of the hotel keep her room for her until her return, which was done. She further made arrangements with the restaurant where she was employed to keep her place for her until her return. (Tr. p. 33). She lacked the funds to make this trip and in order to aid her to make the trip to Spokane and return, defendant, Corbett, agreed or arranged with her to send her the money for her return. It was fully understood at the time of her leaving that she would return to Boise. She wrote a letter to her father while she was in Spokane, in which she advised him that she would return to Boise. (Tr. pp. 32-33). In view of this state of facts, we earnestly contend that the trans-

portation, as charged in the indictment, was not for immoral purposes but for perfectly legitimate purposes and, therefore, is not a violation of the Statute.

> "Taking into account everything disclosed which upon her going back to McMechen, and her reason for returning, it is impossible for us to discover, in the words or conduct of defendant, anything resembling that persuasion and inducement which the act seems clearly to contemplate, and which appears to us essential to constitute a violation of the provision in question. The only reasonable deduction from the proofs is that the girl went home simply and solely because she felt that under the circumstances she ought to go there. The fact that the message from her aunt was brought to her by the man who had seduced her, and with whom she had immoral relations during the previous two years, cannot be said to have at all caused her return, because it does not seem open to doubt that she would have gone home just the same if the information and request upon which she acted had come to her through another channel. In short, there was no perceptible relation of cause and effect between her return and the defendant's misconduct with her, whether before or after that event."

Welch vs. United States, 220 Fed. p. 764.

> "There can be no doubt that the sole object of the trip from Shafter to St. Louis was to enable her to visit her sister, and to try to obtain employment in a store, as she had been employed some months before. There is nothing in the evidence to show any possible reason why he should have gone to the trouble

and expense of taking her to St. Louis merely in order that he might have illicit intercourse with her."

Sloan vs. United States, 287 Fed. 91.

"In order to constitute the offense charged, there must be substantial evidence that the intention to transport the woman for immoral purpose must have been formed by the parties before they reached the foreign state to which the woman is being transported. If it did not exist then but was formed after reaching the state in which the immorality is committed, it is clearly insufficient to warrant a conviction under the act."

Sloan vs. United States, 287 Fed. 91.

The return of the defendant, Nora Bishop ,to Boise, Idaho, would have occurred regardless of any act of the defendant, Corbett, because she contemplated securing a divorce from her husband, had established her domicile at Boise, Idaho, and had employment there and it was her home and the only home she had.

Further, no acts of immorality, either prior to or after her return from Spokane was proved. The only evidence that immoral relations existed between them at any time was the inference that might be drawn from their association at the Capital Hotel and the interest which the defendant, Corbett, manifested in Nora Bishop; and if there were any immoral relations between them, which we deny, it existed long prior to her return to Boise.

As to the second assignment of error in the re-

portation, as charged in the indictment, was not for immoral purposes but for perfectly legitimate purposes and, therefore, is not a violation of the Statute.

> "Taking into account everything disclosed which upon her going back to McMechen, and her reason for returning, it is impossible for us to discover, in the words or conduct of defendant, anything resembling that persuasion and inducement which the act seems clearly to contemplate, and which appears to us essential to constitute a violation of the provision in question. The only reasonable deduction from the proofs is that the girl went home simply and solely because she felt that under the circumstances she ought to go there. The fact that the message from her aunt was brought to her by the man who had seduced her, and with whom she had immoral relations during the previous two years, cannot be said to have at all caused her return, because it does not seem open to doubt that she would have gone home just the same if the information and request upon which she acted had come to her through another channel. In short, there was no perceptible relation of cause and effect between her return and the defendant's misconduct with her, whether before or after that event."

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As to the second assignment of error in the re-

fusal of the Court to give the following instruction:

> "The jury are instructed that if you are satisfied from the evidence that the defendants were domiciled and living at Boise, Idaho, and while so domiciled and living, Nora E. Bishop, alias Ellen Stone, was transported in interstate commerce to Spokane, Washington, from Boise, Idaho, and returned from Spokane, Washington, to Boise, Idaho, and at the time of leaving Boise, Idaho, for Spokane, Washington, she left her position of employment, both of the defendants fully intending at the time she left Boise, Idaho, that she would return from Spokane, Washington, to her employment at Boise, Idaho, after having visited her children at Spokane, Washington, and if you find from the evidence that the defendant, J. R. Corbett, at the time of her leaving Boise, Idaho, for her said trip to Spokane, Washington, and return, arranged with her to furnish the money and did furnish her the money to pay her transportation in interstate commerce to Spokane, Washington, and return to Boise, Idaho, and even if you should further find from the evidence that the defendants prior to and at the time of her going from Boise, Idaho, to Spokane, Washington, and returning to Boise, Idaho, had illicit intercourse, and if you further find from the evidence that he had in mind at the time of furnisshing transportation that he would continue the prior illicit intercourse with her, you should acquit them."

For the reasons set out in Assignment No. 1.

We contend that this instruction should have

been given under the evidence as proved on the trial and that our contention is supported by the authorities.

> "A man who produced the interstate transportation of a girl with whom he had intercourse whenever he sought it, had during the past three years for the purposes of procuring a place where she could remain until after her confinement, cannot be convicted under the White Slave Act, although he accompanied her and anticipated that he would have intercourse with her after she left the state, if such expectation played no part in inducing him to procure transportation."
>
> Van Pelt vs. United States, 240 Fed., 346.

> "In our judgment it will not do to say upon the facts here considered and about which there is no dispute that the act in question is violated because it may have occurred to him or he may have had in mind the probability or expectation of possessing her again unless her return to that place were brought about or influenced by his persuasion to justify his conviction, we thing it was necessary to show that except for his sexpress desire and inducement she would not have made the journey. It appears to us an undeniable proposition when this girl went back home for a legitimate and commendable reason because of information coming to her which was of itself ample cause and explanation of her return. The defendant can be held to have committed an offense of which he was found guilty merely because he might have had the secret desire or intention of using her for the gratification of his passion, although he had nothing whatever

to do with her going back, which was entirely suitable and proper."

Welsch vs. United States, 220 Fed. 769.

"For knowingly causing the transportation from one state to another for an immoral purpurpose where the testimony of the girl was uncontradicted was that she insisted on going to a city in another state for reasons which she stated and that she paid for both tickets the evidence is insufficient to sustain conviction."

Torn vs. United States, 278 Fed. 932.

We insist under the evidence that there was no influence or persuasion used by the defendant, Corbett, to get her to come to Boise. That she had fully made up her mind before leaving that she should so return and there is no evidence showing that while she was in Spokane she had changed her intention in this regard.

That the telegram of January 11th, 1923, transcript page 28, in which defendant, Corbett, stated: "Sending money to come home on. Wire when you start", is only carrying out on the part of Corbett his prior arrangement with Nora Bishop to furnish her the money to make the complete trip.

The Verdict of the Jury Is Contrary to the Evidence.

As to (a) of said Assignment of Error No. 3 we submit that the evidence herein referred to under Assignment No. 1 of Errors proved beyond all question that the transportation was for a legi-

timate purpose and not with the intent and purpose that Nora E. Bishop give herself up to debauchery and other immoral practices.

As to (b), the evidence clearly shows that there was no direct proof as to any illicit intercourse between the defendants at any time and that the jury must have inferred such association from the circumstances of their associating together at the Capital Hotel.

As to (c), there is no proof that Nora E. Bishop was transported from one state into another. As to this subdivision we desire to call the Court's attention again to the evidence adduced at the trial. Nora Bishop left her domicile in Boise, Idaho, to go to Spokane and return to her domicile at Boise. Her mission was a temporary one and as soon as the purpose for which she went to Spokane was completed she was to return to Boise. This was a continuous trip, not from one state into another but from a point in a state back to the same point in the same state.

> "The transportation under the White Slave Act shall include transportation from any state or territory to any other state and territory. This definition necessarily excludes by implication transportation from one point in a state to another point in the same state. The words "from and to" used in the Act manifestly refer to two different states or territories as the respective points of origin and final destination of the transportation and not to a state through which the woman is carried

as a mere incident of the through transportation."

U. S. vs. Wilson, 266 Fed. 712.

As to (e) of said Assignment of Errors, there was no proof that there was at any time illicit sexual intercourse between the defendants and further, there is no evidence of intent to transport for immoral purposes. Both the intent and the illicit relations, if any existed, is only proven by presuming the intent and sexual relation by inference.

A fact cannot be established by a presumption upon a presumption.

"It is not permissible for a jury to base an inference of fact upon another fact, which is only established by presumption."

Cunnard S. S. Co. vs. Kelley, 126 Fed. 610.

"Whenever circumstantial evidence is relied upon to prove a fact, the circumstances must be proved, and not themselves presumed."

United States vs. Ross, 92 U. S. p. 281.

Starkie on Ev., p. 80, lays down the rule:

"In the first place, as the very foundation of indirect evidence is the establishment of one r more facts from which the inference is sought to be made, the law requires that the latter should be established by direct evidence, as if they were the very facts in issue. It is upon this principal that courts are daily called upon to exclude evidence as too remote for the consideration of the jury. The law requires an open, visible connection between the prin-

cipal and evidentiary facts and the deductions from them and does not permit a decision to be made on remote inferences."

"A presumption which the jury is to make is not a circumstance in proof; and it is not therefore a legitimate foundation for a presumption. There is no open and visible connection between the fact out of which the first presumption arises and the fact sought to be established by the dependent presumption."

Best Evid. 95.

Jones on Evidence, Voy. 1, Sec. 104, announces the rule as follows:

"But there are certain rules of general application which may for the closing section of this chapter. Perhaps the most important is that presumption must be based upon facts and not upon inferences or upon other presumptions. The mode of arriving at a conclusion of fact by drawing inferences or by resting one presumption upon the basis of another presumption is generally if not universally inadmissible. There must be an open and visible connection between the fact out of which the first presumption arises and the fact sought to be established by the dependent presumption. In other words, although from proof of the fact "A" the fact "B" may be presumed, and from proof of the facts "B" the fact "C" may be presumed, it does not at all follow that proof of the fact "A" producing the presumption of "B" the fact "C" may be presumed, because the fact "C" is dependent upon the proof of fact "B" and presumption is clearly not proof. Nowhere is the presumption held to be a substitute for proof of an independent and material fact."

In the case of Chicago R. I. & Rly. Co. vs. Rhodes, 68 Pac., 58 the Court says:

> "This instruction is erroneous for two reasons: First, as an abstract proposition of law, because it bases one presumption upon another, and the presumptions can only be based upon known facts."
>
> "That as proof of a fact the law permits inferences from other facts but does not allow presumptions of facts from presumptions. A fact being established other facts may be and often are ascertained by just inferences. Not so with mere presumption of fact. No presumption can with safety be drawn from a presumption. There being no fixed or ascertained fact from which an inference of fact might be drawn, none is drawn."
>
> Mitchell's Ex'r., 35 Pac., 443.

In the case of McK. & T. Rly. vs. Foreman, 194 Fed., p. 383 (CCA) the Court says:

> "Again the process of reasoning here employed is faulty and illogical, in that it bases the negligence on a presumption and not on an admitted fact; whereas, a presumption of fact must be based upon a known or established fact and can necer be founded on another presumption."
>
> "It is a well settled rule of law that you cannot base inferences upon inferences."
>
> O'Gara vs. Eisenlahr, 38 N. Y., 296.
>
> Rupert vs. Brooklyn Rly. Co., 154 N. Y. 47 N. E. 971.
>
> "Every inference must stand upon some

clear, direct evidence and not upon other inferences or presumptions."
Supra 47 N. E., 971.

As to Assignment of Error No. 6, the verdict herein is contrary to law for the reason that the Indictment No. 995 does not state a conspiracy, as there is no joint intent alleged therein and for the further reason there was no evidence that any offense was committed, as prohibited by the White Slave Traffic Act.

Indictment No. 995 charges a conspiracy to commit an offense and the offense set out that they conspired to commit was a violation of the White Slave Traffic Act. (Tr. pp. 11, 12) to induce, entice and procure the said Nora E. Bishop, alias Ellen Stone, to give herself up to debauchery and other immoral practices. There is no evidence in this case whatever of any debauchery, of Nora Bishop, either before her leaving on the journey to Spokane or after her return. All the evidence from which debauchery could possibly be inferred on her return is the defendant, Corbett' meeting her and her child at the depot, taking her to her own room at the Capital Hotel, building a fire for her, getting her a light lunch in his room, and each retiring to their own rooms about ten o'clock and when arrested about midnight each was found in their own room with the communicating doors between locked.

We submit that these circumstances would not

prove that she was transported for debauchery, as debauchery has been defined by the Federal Court.

> "Debauch—to engage in the practice of debauchery and illicit sexual relations would seem to indicate a continued course of illicit sexual relations."
>
> Gillette vs. U. S., 236 Fed. 215.
>
> "Debauch"—in one sense is a synonym for 'secure". In this case the seduction has taken place years before. We are not prepared to say that the mere fact that a woman had once or many times fallen from virtue renders a new debauching or seduction of her by an old or new lover legally impossible; but obviously, to sustain a conviction upon the assumption that to debauch means to seduce, there must be evidence that the defendant procured the transportation in order that he might more surely, more readily or more safely induce her to yield to his wishes. The evidence does not suggest that defendant's relations with the prosecutrix had been interrupted, or that they would not have continued, had not the trip been taken.
>
> Van Pelt vs. United States, 240 Fed. 346.

And to other practices this allegation in the indictment mean nothing. It is not set out and specified what practices were immoral. Further, the indictment No. 995 does not allege that the conspiracy was to transport a woman or girl as is required by the White Slave Traffic Act. We contend that Indictment No. 995 does not charge an offense, because there is no joint intent alleged that

she be transported for the purposes of debauchery and for other immoral practices the act to be committed.

Intent is an element of the crime and there must be a joint intent.

> "The acts to be committed or done must be stated and if the conspiracy be one to commit a crime wnere the acts done constituting the crime must be done with an intent specified in the Statute; then the indictment for conspiracy must allege an agreement not only to do but those acts with the intent or for the purpose embraced within the intent specified in the Statute creating the offense. The existence of the intent cannot be left to inference."
>
> United States vs. Green, 136 Fed, p. 569.
>
> United States vs. Crookshank, 92 U. S., 542.

We contend that it is necessary in a conspiracy charge that Ellen Stone should have the same intent as Corbett in that she be transported with the intent that she give herself up to debauchery and other immoral practices, because if it were otherwise Corbett could be convicted only upon showing his intent, while Nora Bishop could be convicted without any intent being shown upon her part. She might have agreed to the transportation for a wholly legitimate and innocent purpose and yet if there was an intent on the part of Corbett, and none on her part she would be guilty, which we do not believe to be the law.

We respectfully submit that these Plaintiffs in Error are entitled to a reversal of the judgments and the cases dismissed.

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